

SUMMARY OF CHANGES

A. General

This version of the Military Justice Manual, COMDTINST M5810.1D has been substantially revised, reorganized, and updated. In addition to substantive changes required by changes in the law and regulations since the last change to the prior version, this Manual has a new look and organization, more helpful aids to the unit commander and practitioner, and, most importantly, improved and expanded guidance to assist those involved in the practice of military justice within the Coast Guard. The information relied on in the past is still in the Manual; it just might be in a different section or chapter. Changes in policy are noted below with a summary of all major changes.

1. Reorganization

a. This Manual is organized into 7 chapters following an administrative and criminal chronological progression as follows:

Ch #	This Manual's Organization	... and includes from the prior Manual's Organization
1	Nonjudicial Punishment	Nonjudicial Punishment (prior Chapter 1)
2	Summary Courts-Martial	Summary Courts-Martial (prior Chapter 10)
3	Pretrial Matters	Pretrial Matters (prior Chapter 2) and most of Personnel of Courts (prior Chapter 3)
4	Trial Matters	Trial Matters (prior Chapter 4)
5	Post Trial Matters	Post Trial Matters (prior Chapter 5)
6	Court-Martial Miscellaneous	Court-Martial Miscellaneous (prior Ch 6) & some of Personnel of Courts (part of old Ch 3)
7	Military Justice Miscellaneous	Military Justice Miscellaneous (prior Chapters 7, 8, & 9)

b. Chapters 1 through 5 follow the progression of disciplinary options available to a commanding officer (administrative measures are in chapter 1 along with

NJP). Chapters 6 and 7 contain additional information supporting the court-martial practice as well as the practice of military justice in general.

c. For the purposes of organization and cross-referencing, this Manual is divided and numbered into:

- (1) Chapters (example: chapter 2);
- (2) Sections (example: section 2.A.);
- (3) Paragraphs (example: paragraph 2.A.4.); and
- (4) Subparagraphs (examples: subparagraph 2.A.4.c., 2.A.4.c.(1), 2.A.4.c.(1)(a), 2.A.4.c.(1)(a)i., etc.).

2. Intranet access

The Manual has been formatted for electronic reference and searching and will be accessible on the Commandant (G-LMJ) intranet web page as both a downloadable electronic word processing file and as an Adobe Acrobat web document. To the extent that it does not change the substance or organization of this Manual additional electronic features will be included in the web page documents as they are implemented (*i.e.*, automatic cross-referencing; links, etc.).

3. New or Improved Practice Aids

Numerous practice aids have been incorporated into this Manual. The mast script (enclosures (1b) and (1c)) has been revised, expanded to include both a detailed and abbreviated version, and improved to reflect the improvements to Chapter 1. A vacation hearing script (enclosure (7a)), Article 32 guide (enclosure (12)), Media Guide (enclosure (15)), Victim-Witness Program forms (enclosure (14f)), and sample pretrial agreement (enclosure (16f)) are among the new materials provided to improve our military justice practice. Of note, the Media Guide contains information about the military justice system and courts-martial that will be as helpful to the unit training officer as the unit public affairs officer.

4. Improved Tables of Content, Index, Definition and Abbreviation Sections

Improved supplementary sections of the Manual such as summary and detailed Tables of Content; Index; Definition and Abbreviation Sections; and extensive cross-referencing within the Manual should assist finding materials. [*See*, Table of Contents and Appendices 1 and 2.]

5. Terminology

This Manual has been revised to provide terminology consistency. A definition section was added to explain and distinguish legal terms of art (*e.g.* “law specialist,” “military attorney,” and “civilian counsel” are not interchangeable; a “member” facing mast is still a member; a member against whom charges have been preferred is an accused; “SJA” and “servicing legal officer” usually refer to the same person; etc.).

B. Summary of Changes

This is a summary and not an exhaustive list of changes to the Manual. Policy changes are highlighted in *italic* type. The summary follows the new Table of Contents (with reference to new sections or paragraphs in the new version, if applicable).

1. Chapter 1 - Nonjudicial Punishment

- a. The chapter on nonjudicial punishment has been reorganized as follows:
 - A. General
 - B. Preliminary Actions
 - C. Member Representation at NJP
 - D. NJP Procedure
 - E. Punishment at NJP
 - F. Appeal of NJP
 - G. Administrative Matters Related to NJP
 - H. NJP Without a Hearing
- b. The word “accused” has been replaced with the word “member” for all references to the subject of the nonjudicial punishment; the same substitution was made to the mast scripts, enclosures (1b) and (1c).
- c. Paragraph 1.B.1. (Report of Offenses): Clarifies the circumstances under which commands receive reports of misconduct and who may initiate a CG-4910.
- d. Paragraph 1.B.3. (Initial Action): *Allows assigned persons other than the executive officer to do the ministerial tasks associated with processing the CG-4910 during initial review and final review.*
- e. Paragraph 1.B.4. (Preliminary Inquiry Officer): Provides more guidance on duties and responsibilities of the PIO.
 - (1) Subparagraph 1.B.4.e. (Rights Warning): Recognizes that when a PIO is appointed, the member facing the allegations is typically suspected of committing

an offense; therefore the PIO shall inform the member, using Enclosure (5), of the member's rights under Article 31(b), UCMJ prior to questioning the member.

(2) Subparagraph 1.B.4.i (Member's Opportunity to Inspect Documents and Evidence): Provides the PIO, at the command's discretion, should, before mast, allow the member the opportunity to inspect documents and evidence to be considered by the commanding officer in deciding whether and how much nonjudicial punishment to impose. Such a procedure minimizes the disruption of the mast procedure (the scripts in Enclosures (1b) and (1c) have been updated to include an inquiry from the commanding officer asking the member whether he or she has had such an opportunity to inspect the documents and evidence).

f. Paragraph 1.C.3. (Mast Representative): Discusses the role of the mast representative at mast, the selection of the mast representative, and provides additional guidance for those circumstances in which the member declines a mast representative.

g. Paragraph 1.C.4. (Spokesperson): *Based on the requirements of paragraph 4.c.(1)(b), Part V, MCM, the Manual now provides that a spokesperson may appear with a member at NJP in lieu of a mast representative. A spokesperson is simply an individual selected and arranged for by the member who, at the member's election, speaks for him or her at those times during the mast when the member's responses are invited by the commanding officer. The mast need not be delayed to permit the presence of a spokesperson..*

h. Paragraph 1.D.1. (NJP Procedures – General):

(1) Subparagraph 1.D.1.c. (Special Arrangement for Member at a Detached Unit): Allows two-way videoconference to accomplish appearance of member at mast where member unit detached from mast authority.

(2) Subparagraph 1.D.1.e. (Proceedings Open to the Public): States that mast is normally open to the public, per Part V, MCM, and may be closed only if it involves classified information, due to operational necessity, or other good cause.

(3) Subparagraph 1.D.1.f. (Burden of Proof): States that burden of proof at NJP is preponderance of the evidence.

i. Paragraph 1.D.9. (Dismissing Unsupported Allegations): Expressly permits the mast authority to dismiss any unproven offenses before the member presents evidence.

j. Paragraph 1.D.13. (Consideration of Prior Documented Performance): States mast authority should review member's PDR and consider member's prior performance in deciding whether to impose NJP and, if so, how much punishment is appropriate.

k. Paragraph 1.D.15 (Findings) requires the mast authority to inform the member what offenses the mast authority believes the member committed before awarding NJP.

1. Paragraph 1.D.16 (Vacation of Earlier Suspended Punishment) Incorporates vacation of earlier suspended punishment into mast script.

m. Paragraph 1.D.22 (Publication): Discusses means of publishing NJP results to unit.

n. Paragraph 1.E.3 (Effective Date of Punishment):

(1) Subparagraph 1.E.3.a.(2) (General): Allows commanding officers of vessels broader discretion to determine commencement of restriction.

(2) Subparagraphs to 1.E.3.b (Transfer of Member): Provides additional circumstances under which a member transferred while serving punishment imposed at NJP will continue serving that punishment at the new unit.

o. Paragraph 1.E.4 (Suspension of Punishment):

(1) Subparagraphs to 1.E.4.c (Transfer of Member): Provides additional circumstances under which a member transferred while subject to a suspended punishment imposed at NJP will continue to be subject to the suspended punishment at the new unit.

p. Paragraph 1.E.5 (Vacation of Suspension):

(1) Subparagraph 1.E.5.c (Vacation Proceedings): Provides that new enclosure (7a) is available as a script for a hearing regarding vacation of punishment imposed at NJP.

q. Paragraph 1.G.1 (Administrative Measures Independent of Article 15, UCMJ):

(1) Subparagraph 1.G.1.b (Extra Military Instruction): Expands discussion of EMI.

2. Chapter 2- Summary Courts-Martial

No major changes were made to Chapter 2.

3. Chapter 3 - Pretrial Matters

a. Paragraph 3.A.3 (Areas of Responsibility):

(1) Subparagraph 3.A.3.b(3) (Non-Coast Guard Commands): Provides the MLC commanders with primary jurisdiction over members returned to Coast Guard for disciplinary reasons from duty with joint commands.

b. Paragraph 3.B.3. (Jurisdiction Limitations Under Articles 2 and 3, UCMJ):

(1) Subparagraph 3.B.3.b. (Public Health Service Members): Addresses disciplinary proceedings involving Public Health Service personnel assigned to duty and serving with the Coast Guard.

c. Paragraph 3.C.1. (Pretrial Restraint and Confinement; General): Provides more in-depth guidance regarding imposition of pretrial restraint and confinement (from RCM 304 and 305).

d. Paragraph 3.C.3. (Commanding Officer's Review of Pretrial Confinement):

(1) Subparagraph 3.C.3.b. (Single Determination): Clarifies that a commanding officer may make the 48-hour probable cause determination and submit his or her 72-hour review memorandum even though he or she ordered the initial confinement so long as he or she remains neutral and detached regarding the case.

e. Paragraph 3.C.4. (Review of Pretrial Confinement by Initial Review Officer):

(1) Subparagraph 3.C.4.c. (Using the DOD Confinement Facility IRO): Clarifies that the brig-designated IRO review may fulfill the requirement for a Coast Guard review of pretrial confinement.

f. Paragraph 3.D.2. (Forwarding of Charges):

(1) Subparagraph 3.D.2.c. (Forwarding with Disposition Recommendation): Clarifies that commanding officer may always forward draft charges to superior commanding officer with a recommendation for disposition.

g. Paragraph 3.F.5. (Procedure): Notes that enclosure (12) includes a new Article 32 guide and script that will be maintained on the G-LMJ web page.

h. Paragraph 3.F.6. (Claims of Privilege at Investigations):

(1) Subparagraph 3.F.6.b. (Mishap Investigations): Clarifies the requirement that Commandant (G-LMJ) and (G-WK) shall be contacted prior to any release of privileged mishap information or assertion of a privilege under MRE 506 or 507 at an Article 32 investigation.

i. Paragraph 3.F.7. (Use of Investigative Material): Clarifies that Article 32 investigating officer may review CGIS ROI or PIO report in order to assist in making determinations regarding witness and evidence issues before the hearing.

j. Paragraph 3.H.2. (Detailing Certified Defense Counsel to Special and General Courts-Martial): Defers to existing procedures in MLC Atlantic and Pacific regarding detail of defense counsel.

k. Paragraph 3.H.3. (Obtaining Individual Military Counsel):

(1) Subparagraph 3.H.3.b(2)(a) (existing attorney-client relationship): *Requires “existing” attorney-client relationship to qualify as an exception to categorical determination of non-availability. An attorney-client relationship exists between the accused and requested counsel when it has been properly authorized by the responsible authority, the requested counsel and the accused have had a privileged conversation relating to a charge pending before a proceeding (GCM, SPCM, Article 32 investigation), and the requested counsel has engaged in active pretrial preparation and strategy with regard to that charge.*

(2) Subparagraph 3.H.3.b(2)(b) (Defined): Defines attorney-client relationship for purpose of qualifying as an exception to categorical determination of non-availability.

l. Paragraph 3.H.5.f. (Bailiffs and Court-Security Personnel): *Requires trial counsel to brief bailiff on bailiff duties and assigns trial counsel the responsibility to make an initial security assessment.*

m. Paragraph 3.J.1. (General): References enclosure (16f), a model pretrial agreement that may be adopted for use in Coast Guard courts-martial.

(1) Subparagraph 3.J.2.e. (Deferral or Waiver of Automatic Forfeitures): Alerts negotiators to possibility that member may enter a no pay status during confinement and to keep this in mind when negotiating PTA terms, especially with respect to deferral or waiver of administrative forfeitures under Article 58b, UCMJ.

n. Paragraph 3.M.4. (Keeping the Victim Informed): References enclosure (14f), Victim-Witness Assistance Program forms available to distribute to victims and witnesses during investigations and court-martial proceedings and the mandatory VWAP form for post trial confinees.

o. Section 3.N. (Witness Fees and Payment): Establishes updated procedures for submitting civilian witness travel claims and obtaining advances for subpoenaed witnesses.

4. Chapter 4 - Trial Matters

a. Section 4.B. (Spectators and Release of Information at Trial): References enclosure (15), the U.S. Coast Guard Media Relations in High-Visibility Court-Martial Cases -- A Practical Guide; a guide to the military justice system; written with a minimum of legalese; useful as a training tool as well as its intended public affairs purposes.

5. Chapter 5 - Post Trial Matters

a. Paragraph 5.A.1. (General and Special Courts-Martial): Acknowledges that verbatim records of trial are the norm and summarized records of trial will only be prepared with the concurrence of the SJA and military judge presiding over the case.

(1) Subparagraph 5.A.1.c. (Acquittals and Findings of Not Guilty): Reflects need to prepare limited record of proceedings in cases in which the member is found not guilty by lack of mental responsibility.

(2) Subparagraph 5.A.2.e. (Exhibits): Details record of trial requirements for exhibits.

(3) Subparagraph 5.A.2.f. (General Instructions): Provides updated general instructions regarding the preparation of the record of trial.

b. Paragraph 5.C.5. (Appointment of Appellate Defense Counsel): Articulates current practice of appointing appellate defense counsel to all members convicted whose cases will receive Article 66, UCMJ review.

c. Paragraph 5.C.6. (Appointment of Counsel for Members Sentenced to Death by GCM): Provides for appointment of counsel for members sentenced to death for filing of post-conviction *habeas corpus* petition.

d. Paragraph 5.D.5. (Forfeitures, Reductions in Pay Grade, and Automatic Provisions):

(1) Subparagraph 5.D.5.b. (Statutory Administrative Forfeitures): Provides additional guidance on treatment of administrative forfeitures. Announces that total approved adjudged forfeitures and fines in combination with administrative forfeitures may not exceed jurisdictional punishment cap on court-martial forum.

e. Paragraph 5.G.5. (Promulgating Order Numbering): Articulates current practice of sequential numbering of promulgating and supplementary orders.

6. Chapter 6 - Court-Martial Miscellaneous Matters

a. Section 6.E. (Tenure for Military Trial and Appellate Judges): *Provides limited tenure for military trial and appellate judges.*

b. Section 6.G. (*Professional Supervision of Military Trial and Appellate Judges and Attorneys Practicing in Proceedings Governed by the UCMJ and MCM*): *Incorporates the requirements of RCM 109 into judge and counsel professional disciplinary procedures.*

c. Section 6.J. (Submitting Proposed Changes to the Manual for Courts-Martial (MCM)): Sets forth the role of the Coast Guard in the JSC and informs the Coast Guard legal community of the process by which the JSC proposed changes to the MCM for the President's approval.

7. Chapter 7 - Military Justice Miscellaneous Matters

a. Section 7.C. (Search Authorizations): Provides updated guidance for obtaining search authorizations from a military judge or commanding officer. *Written affidavits may be used in lieu of verbatim transcripts.*

8. Enclosures

Encl (1) **Mast Scripts:** The mast script has been expanded to include instructions, a detailed script and an abbreviated script, and a table of maximum punishments and limitations. Updated to incorporate changes to Chapter 1 including the role of the spokesperson, inquiring if member had adequate time to prepare for mast, dismissing allegations inadequately supported by evidence before taking member's statement, and hearing from member's witnesses or from the department head, command master chief, executive officer, etc. Incorporates vacation proceedings of a prior suspended punishment.

Encl (5) **Article 31(b) Rights Acknowledgement and Waiver:** Improved form; more useful to investigator and suspect.

Encl (6b) **Letter of Admonishment/Reprimand:** Moved format for letter of admonishment or reprimand from old Chapter 1.

Encl (7a) **Suggested Vacation Script:** New instructions and suggested script to follow to vacate a prior suspended punishment under Article 15, UCMJ or Summary Court-Martial.

Encl (12) **Article 32, UCMJ Guide and Script:** Instructions, script, sample letters and report, and blank report to assist counsel assigned to an Article 32, UCMJ pretrial investigation.

Encl (14f) **Victim-Witness Assistance Program Forms:** Forms for distribution to victims and witnesses during investigations and court-martial proceedings; also includes the mandatory VWAP form for post trial confinees.

Encl (15) **U.S. Coast Guard Media Relations in High-Visibility Court-Martial Cases: A Practical Guide:** Non-lawyer guide to the military justice system; written without legalese; useful as a training tool as well as for its intended public affairs purposes.

Encl (16f) **Sample Pretrial Agreement:** A pretrial agreement with common provisions that may be adopted for use in Coast Guard courts-martial.

Encl (26) **Military Judge Certification Request:** Format for request removed from body of MJM.

RECORD OF CHANGES			
CHANGE NUMBER	DATE OF CHANGE	DATE ENTERED	BY WHOM ENTERED

RECORD OF CHANGES**MILITARY JUSTICE MANUAL
COMMANDANT INSTRUCTION M5810.1D**

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